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#### United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on 31st day of August, A. D. 1938.

Commissioners: Garland S. Ferguson, Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto, testimony, and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That respondent, PRO-KER Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, in connection with offering for sale, sale and distribution of a hair preparation and treatment designated "PRO-KER" and "Charles Nessler's Pro-Ker Hair Milk" or any product containing the same, or substantially the same ingredients sold under that name or any name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that said product:

1. Is a competent treatment for falling hair, baldness, or any other hair trouble.

2. Will grow hair or replace fallen hair with new hair.

<sup>1</sup> 2 F.R. 533 (622 DI).

3. Will prevent hair from falling and will cause the user to retain hair.

4. Gets at the cause or to the root of all hair trouble, and will "correct," "rid," "end," or "cure" any hair trouble or scalp disorder.

5. Will force nature to replace fallen hairs and produce a new growth of hair.

6. Produces a vital, healthy, and strong scalp and creates the perfect hair growing condition, enabling the user to have abundant healthy hair.

*It is further ordered*, That the respondent shall, within thirty (30) days after service upon it of this order, file with the Commission a reply in writing setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON,  
Secretary.

[F.R. Doc. 38-2706; Filed, September 15, 1938; 12:27 p.m.]

[Docket No. 3467]

#### IN THE MATTER OF GUM, INCORPORATED

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.*—Selling, etc., chewing gum, so packed, etc., that sales thereof to general public are to be, or may be made, by means of a lottery, etc., as specified, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b.) [Cease and desist order, Gum, Incorporated, Docket 3467, August 31, 1938.]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.*—Supplying, etc., to dealers, assortments of chewing gum which are, or may be used, without alteration, etc., to conduct a lottery, etc., in the sale thereof to the public, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b.) [Cease and desist order, Gum, Incorporated, Docket 3467, August 31, 1938.]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.*—Supplying, etc., to dealers assortments of chewing gum with a push card or other lottery device for use or which may be used in distributing, etc., such chewing gum to public at retail, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b.) [Cease and desist order, Gum, Incorporated, Docket 3467, August 31, 1938.]

#### United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of August, A. D. 1938.

Commissioners: Garland S. Ferguson, Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon

the complaint of the Commission and the answer of respondent in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

*It is ordered*, That the respondent, Gum, Incorporated, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of chewing gum in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Selling and distributing chewing gum so packed or assembled that sales of such chewing gum to the general public are to be made or may be made, by means of a lottery, gaming device or gift enterprise.

(2) Supplying to or placing in the hands of dealers, assortments of chewing gum which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device or gift enterprise in the sale or distribution of chewing gum contained in said assortments to the public.

(3) Supplying to or placing in the hands of dealers, assortments of chewing gum together with a push card or other lottery device for use or which may be used in distributing or selling such chewing gum to the public at retail.

*It is further ordered*, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON,  
Secretary.

[F.R. Doc. 38-2705; Filed, September 15, 1938; 12:27 p.m.]

#### TITLE 26—INTERNAL REVENUE BUREAU OF INTERNAL REVENUE

[T.D. 4360]  
INCOME TAX

ARTICLES 167-1 OF REGULATIONS 86 AND 94,  
AS AMENDED, FURTHER AMENDED

To Collectors of Internal Revenue and  
Others Concerned:

Subdivisions (b) of articles 167-1 of Regulations 86 and 94, as amended by Treasury Decision 4759,<sup>2</sup> approved Sep-

<sup>1</sup> 1 F.R. 1918.

<sup>2</sup> 2 F.R. 1823 (2135 DI).

tember 7, 1937, are further amended to reads as follows:

"(b) *Test of taxability to the grantor.*—The test prescribed by the Act as to the sufficiency of the grantor's retained interest in the trust income, resulting in the taxation of such income to the grantor, is whether he has failed to divest himself, both permanently and definitively, of every right which might, by any possibility, enable him to have such income, at some time, distributed to him, either actually or constructively. Such a distribution to the grantor occurs within the meaning of section 167 if the income is paid to him or to another in obedience to his direction or if the income is applied in payment of premiums upon policies of insurance on the grantor's life.

"For the purposes of this article, the sufficiency of the grantor's retained interest in the income is not affected by the fact that the grantor has provided that the right to so effect or direct the distribution of income is, or may at some future time be, vested in any person (either alone or in conjunction with the grantor) not having a substantial interest in the income adverse to the grantor.

"If the grantor has retained any such interest in the income, such income is taxable to the grantor regardless of—

"(1) whether it may be distributed currently or accumulated for future distribution;

"(2) whether such distribution, either current or subject to accumulation, is fixed by the trust instrument or is dependent on an exercise of discretion;

"(3) whether, if such distribution is in any way effected by or dependent on an exercise of discretion, the person exercising the discretion is the grantor or a person not having a substantial interest in the income adverse to the grantor, or both. A bare legal interest, such as that of a trustee, is never substantial and never adverse;

"(4) the time or times of such distribution, whether within or without the taxable period, whether conditioned on the precedent giving of notice, or on the elapsing of an interval of time, or on the happening of a specified event, or otherwise;

"(5) when the trust was created.

"Thus the inclusion of any trust within the scope of section 167 is based on the fact that the grantor has retained an interest in the income therefrom by which he is, or may be enabled at some time, to receive its benefits. But the provisions of section 167 are not to be regarded as excluding from taxation to the grantor the income of other trusts, not specified therein, in which the grantor is, for the purposes of the Act, similarly regarded as remaining in substance the owner of the trust income.

If, for example, trust income is applied in satisfaction of the grantor's legal obligation whether to pay a debt, to support dependents, to pay alimony, to furnish maintenance and support, or otherwise, such income is in all cases taxable to the grantor.

"If the grantor strips himself permanently and definitively of every such interest retained by him, the income of the trust realized after such divesting takes effect is not taxable to the grantor but is taxable as provided in sections 161 and 162.

"A person may have an interest that is both substantial and adverse to the grantor in the disposition of only part of the income. There is to be excluded in computing the net income of the grantor only that part of the trust income in the disposition of which such person has a substantial interest adverse to the grantor."

This Treasury Decision is prescribed pursuant to the provisions of section 62 of the Revenue Act of 1934 and of section 62 of the Revenue Act of 1936.

[SEAL] *Guy T. HELVERING,  
Commissioner of Internal Revenue.*  
Approved, September 12, 1938.

*JOHN W. HANES,  
Acting Secretary of the Treasury.*  
[F. R. Doc. 38-2699; Filed, September 14,  
1938; 3:03 p. m.]

#### TITLE 43—PUBLIC LANDS DIVISION OF GRAZING UTAH GRAZING DISTRICT NO. 4 MODIFICATION

SEPTEMBER 10, 1938.

Under and pursuant to the provisions of the act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976), Departmental order of April 8, 1935, establishing Utah Grazing District No. 4, is hereby revoked as far as it affects the following-described land:

SALT LAKE MERIDIAN—  
T. 36 S., R. 4½ W., sec. 4, SW¼.

*E. K. BURLEW,  
Acting Secretary of the Interior.*  
[F. R. Doc. 38-2702; Filed, September 15,  
1938; 10:00 a. m.]

#### Notices

#### DEPARTMENT OF THE INTERIOR. National Bituminous Coal Commission.

[General Docket No. 15]

ESTABLISHMENT OF MINIMUM PRICES AND  
MARKETING RULES AND REGULATIONS:  
DETERMINATIONS OF WEIGHTED AVERAGE

OF THE TOTAL COSTS OF THE TONNAGE  
PRODUCED WITHIN MINIMUM PRICE  
AREAS 1, 2, 3, 4, 5, 6, 7, 9, AND 10

#### ORDER RESCINDING ORDERS PERMITTING INSPECTION BY INTERESTED PARTIES OF VERIFIED COST REPORTS OF PRODUCERS

Whereas, the Commission by Orders issued August 31, 1938, and September 9, 1938, within the above entitled proceedings, directed the Secretary of the Commission to cause the verified cost reports of the individual producers within each of Minimum Price Areas 1, 2, 3, 4, 5, 6, 9 and 10 to be made available for inspection during business hours on and after September 15, 1938 at the offices of the Commission, Central Savings Bank Building, Denver, Colorado, and Washington, D. C., by those interested parties who had filed appearances in this proceeding; and

Whereas, certain producers have secured a temporary stay from the Court of Appeals of the District of Columbia restraining the Commission from disclosing their individual cost reports pending their appeal from an Order of the U. S. District Court, of the District of Columbia, dismissing their bill for a restraining order; and

Whereas, the Commission is of the belief that the disclosure at this time of the verified cost reports of those producers who are not parties to the restraining order might cause possible discrimination and hardship:

Now, therefore, Pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes," (Public, No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders and directs:

1. That the Commission's Orders dated August 31, 1938, and Order dated September 9, 1938, directing the Secretary to cause the verified cost reports of the individual producers within each of the Minimum Price Areas named herein to be made available for inspection on September 15, 1938, and noticing a hearing for September 26, 1938, to be held at Denver, Colorado, for the purpose of receiving evidence relating to the determinations of the weighted average of the total costs of the tonnage produced in Minimum Price Areas 6, 7, 9, and 10, be and hereby are rescinded.

2. That the Secretary be and he is hereby directed to cause a copy of this Order to be mailed to each Code Member, to the Consumers' Counsel, to the Secretary of each District Board, and to all other parties who have entered appearances in this proceeding and shall

## FEDERAL REGISTER, Friday, September 16, 1938

cause this Order to be published forthwith in the FEDERAL REGISTER.

By Order of the Commission.

Dated this 14th day of September 1938.

[SEAL] F. WITCHER McCULLOUGH,  
Secretary.

[F. R. Doc. 38-2707; Filed, September 15,  
1938; 12:43 p. m.]

## INTERSTATE COMMERCE COMMISSION.

[No. 24049]

ORDER RELATIVE TO A. JOHNSTON, GRAND CHIEF ENGINEER OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL. V. THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 13th day of September, A. D. 1938.

Upon further consideration of the record in the above-entitled proceeding, and to comply with the terms of the stipulation heretofore entered into by all parties to the court proceeding relating to the order therein dated December 27, 1937,<sup>1</sup> now pending in the United States District Court for the Northern District of Ohio, and to afford opportunity for the proper consideration of said case by the court;

<sup>1</sup> 2 F. R. 2984 (3450 DI).

*It is ordered*, That the effective date of the said order be, and it is hereby, further postponed from October 1 to November 15, 1938.

*It is further ordered*, That the said order shall in all other respects remain in full force and effect.

By the Commission.

[SEAL] W. P. BARTEL,  
Secretary.

[F. R. Doc. 38-2704; Filed, September 15,  
1938; 11:50 a. m.]

## RURAL ELECTRIFICATION ADMINISTRATION.

[Administrative Order No. 288]

## ALLOCATION OF FUNDS FOR LOANS

SEPTEMBER 12, 1938.

By virtue of the authority vested in me by the provisions of Section 5 of the Rural Electrification Act of 1936, I hereby allocate, from the sums authorized by said Act, funds for loans for the projects and in the amounts as set forth in the following schedule:

Project Designation	Amount
Kansas 9018W1 Sedgewick	\$5,000
Minnesota 9063W1 Scott	9,000
Nebraska 9024W2 Lancaster	5,000
Texas 9064W1 San Augustine	15,000

JOHN M. CARMODY,  
Administrator.

[F. R. Doc. 38-2701; Filed, September 15,  
1938; 10:00 a. m.]

[Administrative Order No. 289]

## ALLOCATION OF FUNDS FOR LOANS

SEPTEMBER 12, 1938.

By virtue of the authority vested in me by the provisions of Section 4 of the Rural Electrification Act of 1936, I hereby allocate, from the sums authorized by said Act, funds for loans for the projects and in the amounts as set forth in the following schedule:

Project Designation	Amount
Alabama 9021C1 Cherokee	\$75,000
Georgia 9022C1 Colquitt	126,000
Georgia 9037C1 Douglas	176,000
Georgia 9042D1 Toombs	177,000
Georgia 9058C1 Lamar	303,000
Georgia 9068B1 Grady	129,000
Idaho 9015A1 Idaho	191,000
Illinois 9031A1 Monroe	175,000
Indiana 9027A1 Decatur	290,000
Indiana 9044A1 Allen	240,000
Iowa 9009E1 Scott	390,000
Iowa 9011B1 Webster	30,500
Iowa 9039C1 Benton	154,000
Kentucky 9033D1 Daviess	100,000
Michigan 9044A1 Grand Traverse	372,000
Minnesota 9009B1 Goodhue	81,000
Minnesota 9015C1 Faribault	75,000
Minnesota 9018D1 Douglas	25,000
Mississippi 9036A1 Marion	187,000
Missouri 9033A1 Butler	239,000
Montana 9016A1 Park	119,000
North Carolina 9027A2 Hyde	6,000
Ohio 9087A2 Wood	181,000
Pennsylvania 9015C1 Bradford	265,500
Tennessee 9024A1 Montgomery	245,000
Texas 9041B1 Panola	53,000
Virginia 9034A1 Lee	300,000
Wisconsin 9048A1 Waupaca	151,000
Wisconsin 9052A1 Crawford	139,000
Wisconsin 9053A1 Eau Claire	290,000

JOHN M. CARMODY,  
Administrator.

[F. R. Doc. 38-2700; Filed, September 15,  
1938; 10:00 a. m.]